

### REMARKS

The foregoing amendment does not include the introduction of new matter into the present application for invention. Therefore, the Applicant, respectfully, requests that the above amendment be entered in and that the claims to the present application be, kindly, reconsidered.

The Office Action dated January 2, 2004 has been received and considered by the Applicants. Claims 1-14 are pending in the present application for invention. Claims 1-14 stand rejected by the January 2, 2004 Office Action.

The drawings are objected to because the compensator of Fig. 2 is incorrectly labeled as "26". The Examiner suggests re-labeling the compensator as -16 -. Redlined drawings are submitted with this response that correct the reference signs mentioned by the Examiner in the Office Action.

The Examiner suggests headings for the specification. The Applicants respectfully decline adding specification headings to the specification of the present invention because they are not specifically required by 37CFR 1.77(b).

The Office Action rejects Claims 1-2, 4-10, and 12-14 under the provisions of 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,191,889 issued to Maruyama (hereinafter referred to as Maruyama). The Examiner states that Maruyama discloses all the recited elements of the rejected claims. The Applicants, respectfully, disagree. Maruyama discloses a diffraction grating and the rejected claims do not recite a diffraction grating. The present invention recites a phase structure made of a material having temperature-dependent properties and resulting in a non-periodic pattern of optical paths for the radiation beam. The cited reference, Maruyama, discloses a diffraction grating. There is no disclosure, or suggestion within Maruyama for a phase structure as recited by the rejected claims. In an effort to clearly distinguish the present invention from the teachings of Maruyama, the Applicants have amended the claims to recite structural features of the phase structure. The diffraction grating taught by Maruyama is formed as a saw tooth pattern. The amended claims recite a phase structure that is more rectangular in shape. Accordingly, the Applicants respectfully submit that even a very broad reading of Maruyama does not read on the claims as amended.

The Office Action rejects Claims 1-2, 4, 5 and 8-14 under the provisions of 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,590,708 B1 issued to Nakai et al. (hereinafter referred to as Nakai et al.). The Examiner states that Nakai et al. discloses all the recited elements of the rejected claims. The Applicants, respectfully, disagree. Nakai et al. discloses a plurality of diffracting surfaces while the rejected claims recite a phase structure. The phase structure made of the present invention recites recited as being formed of a material having temperature-dependent properties and resulting in a non-periodic pattern of optical paths for the radiation beam. The cited reference, Nakai et al., discloses a diffraction surface. There is no disclosure, or suggestion within Nakai et al. for a phase structure as recited by the rejected claims. In an effort to clearly distinguish the present invention from the teachings of Nakai et al., the Applicants have amended the claims to recite structural features of the phase structure. The diffraction grating taught by Nakai et al. is formed as a saw tooth pattern. The amended claims recite a phase structure that is more rectangular in shape. Accordingly, the Applicants respectfully submit that even a very broad reading of Nakai et al. does not read on the claims as amended.

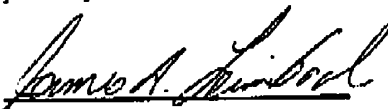
The Office Action rejects Claim 3 under the provisions of 35 U.S.C. §103(a) as being obvious over Maruyama in view of U.S. Patent No. 6,154,326 issued to Ueyanagi et al. (hereinafter referred to as Ueyanagi et al.). The Applicants respectfully submit that the amendment to the claims, as previously discussed, obviates this rejection.

The foregoing amendment adds new Claims 15-20 that recite features of the compensator and are phase structure features. These features are described in the specification to the present invention on page 7, line 28 through page 8, line 20. Therefore, entry of the new claims will not result in the addition of new matter into the present application. The phase structure of the present invention is not disclosed or suggested by the cited references. Accordingly, the new claims are believed to be allowable.

Applicant is not aware of any additional patents, publications, or other information not previously submitted to the Patent and Trademark Office which would be required under 37 C.F.R. 1.99.

In view of the foregoing amendment and remarks, the Applicant believes that the present application is in condition for allowance, with such allowance being, respectfully, requested.

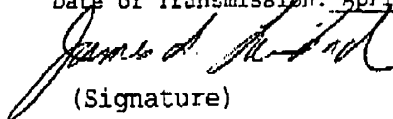
Respectfully submitted,

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